

**§ 502.94 Prehearing conference.**

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

- (i) Simplification of the issues;
  - (ii) The necessity or desirability of amendments to the pleadings;
  - (iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
  - (iv) Limitation on the number of witnesses;
  - (v) The procedure at the hearing;
  - (vi) The distribution to the parties prior to the hearing of written testimony and exhibits;
  - (vii) Consolidation of the examination of witnesses by counsel;
  - (viii) Such other matters as may aid in the disposition of the proceeding.
- (2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He or she shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

(3) The presiding officer shall rule upon all matters presented for decision, orally upon the record when feasible, or by subsequent ruling in writing. If a party determines that a ruling made orally does not cover fully the issue presented, or is unclear, such party may petition for a further ruling thereon within ten (10) days after receipt of the transcript.

(b) In any proceeding under the rules in this part, the presiding officer may call the parties together for an informal conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purposes of this section. [Rule 94.]

(c) At any prehearing conference, consideration shall be given to whether the use of alternative means of dispute

resolution would be appropriate or useful for the disposition of the proceeding.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993]

**§ 502.95 Prehearing statements.**

(a) Unless waiver is granted by the presiding officer, it shall be the duty of all parties to a proceeding to prepare a statement or statements at a time and in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth the following matters, unless otherwise ordered by the presiding officer:

- (1) Issues involved in the proceeding.
- (2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible.
- (3) Facts in dispute.
- (4) Witnesses and exhibits by which disputed facts will be litigated.
- (5) A brief statement of applicable law.
- (6) The conclusion to be drawn.
- (7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case.

(8) Any appropriate comments, suggestions or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

(c) The presiding officer may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement. Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances.

(d) Following the submission of prehearing statements, the presiding officer may, upon motion or otherwise, convene a prehearing conference for the purpose of further narrowing issues and limiting the scope of the hearing if, in his or her opinion, the prehearing statements indicate lack of dispute of material fact not previously acknowledged by the parties or lack of legitimate need for cross-examination and is authorized to issue appropriate orders consistent with the purposes stated in this section. [Rule 95.]

## EXHIBIT NO. 1 TO SUBPART F

[§ 502.92]

APPLICATION FOR REFUND OF OR WAIVER FOR  
FREIGHT CHARGES DUE TO TARIFF ERROR

Federal Maritime Commission Special Docket No. \_\_\_\_\_

Amount of Freight Charges involved in request \_\_\_\_\_

Application of [Name of carrier, or (if under the 1984 Act) shipper] for the benefit of [Name of person who paid or is responsible for payment of freight charges].

1. *Shipment(s)*. Here fully describe:

(a) Commodity [according to tariff description].

(b) Number of shipments.

(c) Weight or measurement of individual shipment, as well as, all shipments.

(d) Date(s) of shipment(s), i.e., sailing(s) [furnish supporting evidence].

(e) Shipper and place of origin.

(f) Consignee, place of destination and routing of shipment(s).

(g) Name of carrier and date shown on bill of lading [furnish legible copies of bill(s) of lading].

(h) Names of participating ocean carrier(s).

(i) Name(s) of vessel(s) involved in carriage.

(j) Amount of freight charges actually collected [furnish legible copies of rated bill(s) of lading or freight bill(s), as appropriate] broken down (i) per shipment, (ii) in the aggregate, (iii) by whom paid, (iv) who is responsible for payment if different, and (v) date(s) of collection.

(k) Rate applicable at time of shipment [furnish legible copies of tariff page(s)].

(l) Rate sought to be applied [furnish legible copies of tariff page(s)].

(m) Amount of freight charges at rate sought to be applied, per shipment and in the aggregate.

(n) Amount of freight charges sought to be (refunded) (waived), per shipment and in the aggregate.

2. Furnish docket numbers of other special docket applications or decided or pending formal proceedings involving the same rate situations.

3. Furnish any information or evidence as to whether grant of the application will result in discrimination among shippers, ports or carriers.

4. State whether there are shipments of other shippers of the same commodity which (i) moved via the carrier(s) or conference involved in this application during the period of time beginning on the date the tariff omitting the intended rate become effective or on the date the intended rate absent the mistake would have become effective and ending on the day before the effective date of the conforming tariff, and (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in No. 1, above.

5. Fully explain the basis for the application, i.e., the clerical or administrative error or error due to inadvertence, or reasons why freight charges collected are thought to be unlawful (domestic commerce) showing why the application should be granted. Furnish affidavits, if appropriate, and legible copies of all supporting documents. If the error is due to inadvertence, specify the date when the carrier and/or conference intended or agreed to file a new tariff.

[Here set forth Name of Applicant, Signature of Authorized Person, Typed or Printed Name of Person, Title of Person and Date]

State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

I, \_\_\_\_\_, on oath declare that I am \_\_\_\_\_ of the above-named applicant, that I have read this application and know its contents, and that they are true.

Subscribed and sworn to before me, a notary public in and for the State of \_\_\_\_\_, County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19—.

(Seal) \_\_\_\_\_

Notary Public

My Commission expires \_\_\_\_\_.

*Affidavit of Carrier(s)*

[Here, as applicable, set forth same type of affidavit(s) and notarization(s) as set forth on page 2 of this exhibit for carrier, for any other water carrier participating in the transportation under a joint through rate.]

*Certificate of Mailing*

I certify that the date shown below is the date of mailing [or date of delivery to courier] of the original and three (3) copies of this application to the Secretary, Federal Maritime Commission, Washington, D.C., 20573.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19—. [Signature] \_\_\_\_\_.

For ———.

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4144, Feb. 10, 1987; 53 FR 27861, July 25, 1988]

### Subpart G—Time

#### § 502.101 Computation.

In computing any period of time under the rules in this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or national legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or national legal holidays shall be excluded from the computation. [Rule 101.]

#### § 502.102 Enlargement of time to file documents.

Motions for enlargement of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, shall set forth the reasons for the motion. Such motions will be granted only under exceptional circumstances duly demonstrated in the request. Such motions shall conform to the requirements of subpart H of this part, except as to service if they show that the parties have received actual notice of the motion; and in relation to briefs, exceptions, and replies to exceptions, such motions shall conform to the further provisions of §§ 502.222 and 502.227. Upon motion made after the expiration of the specified period, the filing may be permitted where reasonable grounds are found for the failure to file. Replies to such motions shall conform to the requirements of § 502.74. [Rule 102.]

#### § 502.103 Reduction of time to file documents.

Except as otherwise provided by law and for good cause, the Commission, with respect to matters pending before it, and the presiding officer, with respect to matters pending before him or her, may reduce any time limit prescribed in the rules in this part. [Rule 103.]

#### § 502.104 Postponement of hearing.

Motions for postponement of any hearing date shall set forth the reasons for the motion, and shall conform to the requirements of subpart H of this part, except as to service if they show that parties have received such actual notice of motion. Such motions will be granted only if found necessary to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party. Replies to such motions shall conform to the requirements of § 502.74. [Rule 104.]

#### § 502.105 Waiver of rules governing enlargements of time and postponements of hearings.

The Commission, the presiding officer, or the Chief Administrative Law Judge may waive the requirements of §§ 502.102 and 502.104, as to replies to pleadings, etc., to motions for enlargement of time or motions to postpone a hearing, and may rule ex parte on such requests. Requests for enlargement of time or motions to postpone or cancel a prehearing conference or hearing must be received, whether orally or in writing, at least five (5) days before the scheduled date. Except for good cause shown, failure to meet this requirement may result in summary rejection of the request. [Rule 105.]

### Subpart H—Form, Execution, and Service of Documents

#### § 502.111 Form and appearance of documents filed with Commission.

(a) All papers to be filed under the rules in this part may be reproduced by printing or by any other process, provided the copies are clear and legible, shall be dated, the original signed in ink, show the docket description and title of the proceeding, and show the title, if any, and address of the signer. If typewritten, the impression shall be on only one side of the paper and shall be double spaced except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall be not more than 8½ inches wide and 12 inches long, with a left hand margin 1½ inches wide. Printed documents shall be printed in clear type